



INTERIOR BOARD OF INDIAN APPEALS

Vanassa Douchette, d.b.a. Douchette Landscaping, Masonry & Paving v.
Eastern Area Director, Bureau of Indian Affairs

21 IBIA 7 (10/08/1991)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

VANASSA DOUCHETTE,
d.b.a. DOUCHETTE LANDSCAPING, MASONRY & PAVING
v.
EASTERN AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 91-40-A

Decided October 8, 1991

Appeal from rescission of an Indian Business Development Program grant.

Affirmed.

1. Indians: Financial Matters: Financial Assistance

The Bureau of Indian Affairs must determine whether an applicant for an Indian Business Development Program grant is eligible for a grant prior to approving or disapproving the application.

APPEARANCES: Appellant, pro se; John H. Harrington, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Atlanta, Georgia, for appellee.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Vanessa Douchette, d.b.a. Douchette Landscaping, Masonry & Paving, seeks review of a December 12, 1990, decision of the Eastern Area Director, Bureau of Indian Affairs (Area Director; BIA), rescinding approval of an Indian Business Development Program (IBDP) grant in the amount of \$74,020. For the reasons discussed below, the Board affirms the Area Director's decision.

Background

Appellant is a member of the Passamaquoddy Tribe. She resides and operates her business in Norwich, Connecticut. Sometime prior to September 28, 1990, she applied to the Eastern Area Office, BIA, for an IBDP grant in the amount of \$100,000. ^{1/} She stated that the grant would be used to purchase equipment and to fund current operations during an expansion of her business. Her application was approved on September 28,

^{1/} The Area Director's brief states that the application was submitted on Aug. 31, 1990. The record copy of the application is dated Nov. 15, 1990. There is no explanation of this discrepancy in the record or in the Area Director's brief.

1990, in the amount of \$74,020. Appellant agreed to accept the lower amount and signed a grant agreement.

On November 14 and 15, 1990, prior to disbursement of any grant funds to appellant, the Eastern Area Supervisory Contracts Specialist visited her business and met with her. In a memorandum dated November 21, 1990, he recommended that the grant be rescinded and that appellant be required to submit a new application because, among other things, she did not have a current home improvement contractor's permit and was unable to show that she was sole owner of the business.

On December 12, 1990, the Area Director rescinded approval of the grant, stating:

Based on the information we received, it appears that most of the equipment you listed as assets were not in your name or that of the company. They were, in fact, registered to Mr. Thomas F. Kirker, Sr. or held as collateral by im. In addition, there was no documentation to validate that your notes payable to Mr. Kirker were ever signed by the lender. The intent of the grant program is to provide seed money by matching outside financing. The review by [the Supervisory Contracts Specialist] indicates that you were to use the grant to pay the notes to Mr. Kirker.

Your application also indicated that you would provide employment to local tribal people. Our Contract/Grants Coordinator was not able to verify this because records were not available for his review.

It is unclear that you are the sole owner of this business based on the information obtained by [the Supervisory Contracts Specialist]. We regret that we have rescinded our previous approval. However, if you can provide us with a new application and supportive documentation that everything listed as assets (financing and equipment) as well as proof of sole ownership, we may reconsider our position.

Appellant's notice of appeal from this decision was received by the Board on January 16, 1991. Appellant and the Area Director filed briefs.

Discussion and Conclusions

The IBDP program is authorized by Title IV of the Indian Financing Act of 1974, 25 U.S.C. §§ 1521-1524 (1988). 25 U.S.C. § 1521 (1988) provides that the purpose of the program is "to stimulate and increase Indian entrepreneurship and employment by providing equity capital through nonreimbursable grants * * * to Indians and Indian tribes to establish and expand profit-making Indian-owned economic enterprises on or near reservations." Regulations implementing the IBDP program appear in 25 CFR Part 286.

It is immediately apparent that appellant's grant application should not have been approved on the basis of the information before BIA at the time approval was given. 2/

For instance, 25 CFR 286.3 provides: "Applications for grants may be accepted only from individual Indians, Indian tribes, Indian partnerships, corporations or cooperative associations authorized to do business under State, Federal, or Tribal law." Appellant's home improvement contractor's license expired on June 30, 1990. Accordingly, at the time she applied for a grant, she was presumably not authorized to do business as a home improvement contractor. There is no evidence in the record showing that appellant was authorized to engage in any kind of business under State, Federal, or Tribal law.

25 CFR 286.4 provides: "An economic enterprise is eligible to receive equity capital through non-reimbursable grants if it is or will be self-sustaining and profit-oriented and will create employment for Indians." Appellant was not able to produce any support for her assertion that she would employ Indians. 2/

Appellant was also unable to satisfy BIA that she was the sole owner of the business or that the assets she listed for the business actually belonged to the business. From the documents in the record, it is apparent that BIA's concerns, albeit belated, were justified.

[1] Because appellant's application was approved in violation of the requirements of 25 CFR Part 286, and because the Area Director had authority to terminate the grant, 4/ the Board affirms the Area Director's decision to rescind approval of the grant. The Board does not, however, condone the

2/ For purposes of this decision, the Board assumes that appellant's application and the documents attached to it were before BIA on Sept. 28, 1990, when appellant's application was approved. However, as indicated in footnote 1, there is some doubt about this.

3/ Further, 25 CFR 286.7 provides:

"To be eligible for a grant an economic enterprise must be located on an Indian reservation or located where it makes or will make an economic contribution to a nearby reservation by providing employment to tribal members residing thereon or by expending a portion of its income for materials or services on the reservation."

Under this section, it is not enough that appellant show that she will employ Indians. She must show that she will employ Indians residing on a nearby reservation or otherwise make an economic contribution to that reservation. See Harrison v. Acting Minneapolis Area Director, 20 IBIA 183 (1991).

4/ The grant agreement provided in unnumbered paragraph 3: "The Grantor may terminate the grant in whole, or in part, at any time before the date of completion of the project, whenever it is determined that the Grantee has failed to comply with the conditions of the grant."

manner in which BIA handled this matter. Clearly, appellant's eligibility for a grant should have been determined prior to approval. Further, appellant should have been given an opportunity to correct deficiencies in her application prior to a decision either to approve or disapprove the application. Cf. Pourier v. Acting Aberdeen Area Director, 19 IBIA 266 (1991).

On appeal to the Board, appellant submits new documents intended to address BIA's concerns. ^{5/} These documents were not before the Area Director when he issued his decision and, in fact, did not even exist at that time. Therefore, the Board cannot consider them in reviewing the Area Director's decision.

The Area Director invited appellant to submit a new application with new supporting documentation. The documents submitted by appellant in this appeal will be returned to the Area Director as a part of the record for this appeal. If appellant decides to submit a new grant application, the Area Director should take these documents into consideration.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Area Director's December 12, 1990, decision is affirmed.

//original signed

Anita Vogt
Administrative Judge

I concur:

//original signed

Kathryn A. Lynn
Chief Administrative Judge

^{5/} These documents include, inter alia, two promissory notes dated May 10, 1991; a receipt for an application for a home improvement contractor's license, dated May 10, 1991; and an assignment of title for a pick-up, also dated May 10, 1991.